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a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c)(1) and (2), (e)(4) (A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

(c) *OIG and ACA Files Compiled for Other Law Enforcement Purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the Foundation hereby exempts the systems of records entitled "Office of Inspector General Investigative Files" and "Antarctic Conservation Act Files" insofar as they consist of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(d) *Investigations of Scientific Misconduct.* Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of confidential sources of information contained in the following system of records: "Debarment/Scientific Misconduct Files."

(e) *Personnel Security Clearances.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of confidential sources of information contained in the following system of records: "Personnel Security."

(f) *Applicants for Employment.* Records on applicants for employment at NSF are covered by the Office of Personnel Management (OPM) government-wide system notice "Recruiting, Examining and Placement Records." These records are exempted as claimed in 5 CFR 297.501(b)(7).

(g) *Other records.* The Foundation may also assert exemptions for records received from another agency that could properly be claimed by that agency in responding to a request.

## § 613.6 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

## 45 CFR Ch. VI (10–1–02 Edition)

## PART 614—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS OF THE NATIONAL SCIENCE BOARD

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AUTHORITY: Government in the Sunshine Act, sec. 552b of title 5, U.S.C.; 90 Stat. 1241.

SOURCE: 42 FR 14719, Mar. 16, 1977, unless otherwise noted.

### § 614.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the National Science Board will be open to public observation.

### § 614.2 Grounds for closing meetings.

(a) The National Science Board may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Science Foundation;

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Is likely to involve accusing any person of a crime, or formally censuring any person;

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(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(c)(7);

(8) Is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Is likely to disclose information, the premature disclosure of which would:

(i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed Foundation action, unless the Foundation has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the Foundation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the Board close it to the public for any reason referred to in paragraph (a) (5), (6), or (7) of this section. The request should be addressed to the Executive Officer, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. It will be circulated to Members of the Board if received at least three full days before the meeting, and on motion of any Member the Board will determine by record vote whether to close the affected portion of the meeting.

[42 FR 14719, Mar. 16, 1977, as amended at 59 FR 37438, July 22, 1994]

### § 614.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the National Science Board are closed to the public under § 614.2:

(a) The General Counsel of the National Science Foundation shall publicly certify that, in his opinion, that portion or portions may properly be closed to the public. The certificate shall state the exemptions under 5 U.S.C. 552b(c) that make the closings proper.

(b) The presiding officer of the meeting (usually the Chairman of the Board) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The Board shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The National Science Board Office shall maintain the General Counsel's certificate, the presiding officer's statement, and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the Board completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

### § 614.4 Opening of transcript or recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place.

(b) Informal requests to inspect or copy the transcript or electronic recording of a closed session may be made to the staff of the National Science Board and will be handled informally and expeditiously. Written requests to inspect or copy such a transcript or recording that cite the Freedom of Information Act or the Sunshine Act will be treated as formal requests made under the Freedom of Information Act. They will be handled under the Foundation's Freedom of Information procedures described in 45 CFR part 612. The exemptions of these Sunshine Act regulations, 45 CFR 614.2,

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will govern, however, in determining what portions of the transcript or recording may be withheld.

(c) A request to inspect or copy a transcript or electronic recording should specify the date of the meeting and the agenda item or items to which the request pertains. It should contain a promise to pay the costs of any duplication requested.

(d) No search or transcription fees will be charged. Duplication fees may be charged as provided in 45 CFR 612.6.

[42 FR 55619, Oct. 18, 1977]

### **§ 614.5 Public announcement.**

(a) Except as provided in paragraphs (c) and (d) of this section, the National Science Board will make a public announcement of each Board meeting at least one week before the meeting takes place. The announcement will cover:

(1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and telephone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly posted on public notice boards at the National Science Foundation and made available to journals of general scientific interest. Immediately following the issuance of such an announcement, it will be submitted for publication in the *FEDERAL REGISTER*.

(c) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the Board by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) an announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the Board by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 614.2.

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### **§ 614.6 Meeting changes.**

(a) The time or place of a meeting of the National Science Board that has been publicly announced as provided in § 614.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the Board that has been publicly announced as provided in § 614.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when:

(1) The Board determines by record vote that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member on the change at the earliest practicable time.

### **§ 614.7 Record vote.**

(a) For purposes of this part a vote of the National Science Board is a “record vote” if:

(1) It carries by a majority of all those holding office as Board Members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the Board Office will make publicly available a written record showing the vote of each Member on the question.

(c) Within one day of any record vote under which any portion or portions of a Board meeting are to be closed to the public, the Board Office will make available a full written explanation of the Board’s action and a list of all persons expected to attend the meeting, showing their affiliations.

### **§ 614.8 Application to Board Executive Committee.**

All the provisions of this part applicable to the National Science Board shall apply equally to the Executive Committee of the Board whenever the

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Executive Committee is meeting pursuant to its authority to act on behalf of the Board.

### PART 615—TESTIMONY AND PRODUCTION OF RECORDS

Sec.

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AUTHORITY: 42 U.S.C. 1870(a).

SOURCE: 59 FR 44056, Aug. 26, 1994, unless otherwise noted.

#### § 615.1 Purpose.

(a) This part sets forth policies and procedures to be followed when, in connection with a legal proceeding, an NSF employee is issued a demand to provide testimony or produce official records and information.

(b) The provisions of this part are intended to promote economy and efficiency in NSF's programs and operations; minimize the possibility of involving NSF in controversial issues not related to its functions; maintain the impartiality of NSF among private litigants; and protect sensitive, confidential information and the deliberative process.

(c) This part is not intended to and does not waive the sovereign immunity of the United States.

(d) This part is intended only to provide guidance for the internal operations of NSF, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

#### § 615.2 Applicability.

This part applies to demands and requests for factual or expert testimony or for official records or information in legal proceedings, whether or not the

United States is a party, except that it does not apply to:

(a) Demands upon or requests for an NSF employee to testify as to facts or events that are in no way related to his or her official duties or to the functions of NSF,

(b) Demands upon or requests for a former NSF employee to testify as to matters in which the former employee was not directly or materially involved while at NSF,

(c) Demands upon or requests for an NSF reviewer to testify as to matters not directly related to that individual's employment by or service to NSF, and

(d) Congressional demands and requests for testimony or records.

#### § 615.3 Definitions.

(a) *Demand*—A subpoena, order, or other demand of a court or other competent authority for the production of records or for the appearance and testimony of an NSF employee, issued in a legal proceeding between private litigants.

(b) *Foundation* or *NSF* means the National Science Foundation.

(c) *General Counsel* means the General Counsel of the Foundation, or any person to whom the General Counsel has delegated authority under this part.

(d) *Legal proceeding* means any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(e) *Official records and information* means all documents and material which are records of the Foundation under the Freedom of Information Act, 5 U.S.C. 552; all other records contained in NSF's files; and all other information or material acquired by an NSF employee in the performance of his or her official duties or because of his or her official status.

(f) *NSF employee or employee* means any present or former officer or employee of NSF; any other individual hired through contractual agreement by or on behalf of NSF, or who has performed or is performing services under such an agreement for NSF; and any individual who served or is serving on any advisory committee or in any advisory capacity, whether formal or informal.